95-927

Supreme Court, U.S.
FILED
DEC 13 1995
CLERK

No. _____

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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1995

_____

IN THE MATTER OF A MEMBER OF THE BAR
OF THE SUPREME COURT OF DELAWARE:
SAMUEL L. GUY, ESQUIRE

ON PETITION FOR
A WRIT OF CERTIORARI TO

SUPREME COURT OF THE
STATE OF DELAWARE

PETITION FOR WRIT OF CERTIORARI
VOLUME I(PETITION)

SAMUEL L. GUY, ESQ., PRO SE
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36 pp

QUESTIONS PRESENTED

Is it a violation of the 1st Amendment for a Delaware attorney who is the President of the Delaware NAACP to be publicly reprimanded for writing a letter petitioning the government(Delaware's Chief Justice) for redress of grievances, including interference with the right to freely associate with the NAACP, and encouraging Delaware's Chief Justice to openly take a position against continued racism in Delaware's legal community?

In the absence of a disciplinary body meeting its burden of proving the falsity and demeaning nature of the contents of a letter to, and only to, Delaware's Chief Justice, can an attorney be publicly reprimanded and ordered to apologize to the Delaware Chief Justice for exercising the 1st Amendment right of freedom of speech and the right to petition government?

Is it a violation of due process for a disciplinary body to schedule a due process hearing and then deny the due process hearing because an attorney did not participate in a pre-hearing conference, despite the absence of actual notice of the pre-hearing conference scheduled on ten days notice at a time when the Board knew that the attorney was in the middle of a Special Election to fill a vacant State Senate seat, and without a finding of willfully failing to participate in the pre-hearing conference?

Does the Delaware Supreme Court have the authority to order an apology under threat of disbarment from an attorney who lawfully exercises his 1st Amendment rights(speech, petition government, freedom of association with the NAACP)?

Is the letter protected by the 1st Amendment as an expression of opinion based on stated facts?

In the absence of a matter

pending before a court, is there a clear and present danger to the administration of justice for an attorney to petition government for redress of grievances by letter to the Chief Justice who is the administrative head of Delaware's court system?

LIST OF PARTIES

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The prosecuting agency before the Board on Professional Responsibility of the Supreme Court of Delaware and before the Delaware Supreme Court is the Office of Disciplinary Counsel. The attorney of record in this case is:

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OPINIONS BELOW

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is unpublished.

The opinion of the Board On Professional Responsibility appears at Appendix B to the petition and is unpublished.

JURISDICTION

The date on which the highest state court decided my case was September 13, 1995. A copy of that decision appears at Appendix A.

The jurisdiction of this Court is invoked under 28 U.S.C. Section 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. CONSTITUTION

Amendment I-Congress shall make no las respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Amendment XIV Section 1.-All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within

its jurisdiction the equal protection of the laws.

STATUTES AND RULES

Board On Professional Responsibility Rule 15(b)-Except as otherwise provided in these rules, the Superior Court Rules of Civil Procedure apply in disciplinary and disability cases, provided that discovery tights shall not be expanded beyond those provided in Rule 12 hereof.

Delaware Lawyers Rules Professional Conduct Rule 3.5(c)-A lawyer shall not: (c) engage in conduct intended to disrupt a tribunal or engage in undignified or discourteous conduct which is degrading to a tribunal.

Delaware Lawyers Rules Professional Conduct Rule 8.2-A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicatory

officer or public legal officer, or a candidate for appointment to judicial legal office.

Delaware Lawyers Rules Professional Conduct Rule 8.4(d)-It is professional misconduct for a lawyer to: (d) engage in conduct that is prejudicial to the administration of justice;

Delaware Lawyers Rules Professional Conduct Rule 8.1(b)-An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not: (b) fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admission or disciplinary authority, except that this rule does not require disclosure of information otherwise protected by Rule 1.6.

STATEMENT OF THE CASE

Petitioner has been the statewide President of the NAACP since 1992 and served as an attorney for an NAACP branch in Delaware from 1989-1991. Petitioner has been a member of the Delaware Bar since 1989. Beginning in 1991 through to the present, Petitioner provided leadership in Delaware causing unprecedented successes in bringing about diversity in Delaware's legal community. The response of the legal community, including judges, lawyers and the government has been continuous harassment.U.S.C. Amendment I(freedom of association) Petitioner sent a letter to, and only to, Delaware's Chief Justice.Appendix D The letter encourages the Chief Justice to send out a clear anti-discrimination message, and relays to him that in the absence of such the wrong message of tolerance for discrimination will be the message received by many. In addition, the

letter was a formal complaint related to unethical actions on the part of several people and organizations related to the legal community.U.S.C. Amendment I(petition government) The letter expressly relays to the Chief Justice that inherited problems cannot be attributed to him. As the administrative head of the Delaware Court system, he had an obligation to have the contents of my letter investigated. Instead, the Chief Justice joined in with the people who have been wrongfully harassing me and had his clerk instruct the disciplinary counsel to open a disciplinary case against me in violation of my right to petition government for redress of grievances and in violation of my right to free speech.U.S.C. Amendment I

At the time this case began, the Delaware Supreme Court appointed people to sit on the Board on Professional Responsibility. Black members of the Delaware Bar, for all

intents and purposes are not allowed to sit on the Board. As in most areas related to the Delaware legal community, the unwritten rule of law was "no blacks allowed." The Board then hired Disciplinary counsel, the prosecutor in the disciplinary process. So when the Chief Justice's clerk wrote to the Disciplinary Counsel to prosecute me before the Board on Professional Responsibility, there was no way to have a fair and impartial hearing. U.S.C. Amendment XIV Section 1. In fact, the Disciplinary Counsel did everything in his power to prevent the Chief Justice, who made the accusations, from having to testify at the sanctions hearing. I never got to face my accuser, the Chief Justice.

The Board denied me an opportunity to have a due process hearing.U.S.C. Amendment XIV Their justification was my absence from a pre-hearing conference that they scheduled on ten days notice with

full knowledge that I was campaigning in a Special Election for a vacant state senate seat. I never had actual notice of the hearing. This was brought to the Board's attention and a hearing was held. There was no finding that my absence was willful.Appendix B Delaware law and due process does not allow one's right to a hearing to be taken away without such a finding.Board On Professional Responsibility Rule 15(b); Cebenka v. Upjohn Co., Del.Supr., 559 A.2d 1219; Sundor Electric, Inc. v. E.J.T. Construction co., Inc. Del.Supr., 337 A.2d 651. The remedy is rescheduling with costs assessed against the person missing the pre-hearing conference. In Delaware it is common practice to make new laws or not apply the law as it is customarily applied if the object is to "get" a black person who is seeking justice and fairness for all. The Board, with the blessings of the Delaware Supreme, totally

ignored Delaware Supreme Court precedent in order to deny me a due process hearing. On no occasion during the six (6) years I have been an attorney, with constant ongoing harassment from the disciplinary bodies of the Delaware Supreme Court, have they ever scheduled anything on such short notice. Everything, is generally scheduled thirty (30) days in advance.

The Board never made a finding that anything that I said during the proceedings was not true.Appendix B Truth is an absolute defense in 1st Amendment cases.Standing Committee v. Yagman, 55 F.3rd 1430, at 1438(9th Cir. 1995 (Cal.)) In fact, I subpoenaed the Chief Justice and the Clerk of the Supreme Court requesting "with respect to both, please compel the production of every pertinent book, paper and document that demonstrate that the contents of the letter, that is asserted base of this case, contains any statement that is not true."

The Disciplinary Counsel and the Board on Professional Responsibility and the Supreme Court all agreed with the quashing of the subpoenas. This made it impossible for the Chief Justice, the Board, and Disciplinary counsel to prove falsity, an essential element of their case. The aura of being against me caused them to all agree to do something that prevents them from being successful in getting me. The allegations against me never included an accusation that the letter was false because everything in the letter is in fact true. Appendix H; Standing Committee v. Yagman, 55 F.3rd 1430, at 1438(9th Cir. 1995 (Cal.))

There was no court proceeding that was interrupted by the letter I wrote to the Chief Justice.Appendix C,E The actions of the Chief Justice was a direct attempt to interfere with my Freedom of Association with the NAACP and my Freedom of Speech shortly after I

became the statewide president of the NAACP on January 1, 1992.Appendix E; U.S.C. Amendment I Most attorneys would have buckled under with a "gun pointed at their head" and a clear message being received to the effect that if I do not disassociate myself from the NAACP and stop addressing issues related to race, the appointees on the Board and Disciplinary Counsel will try to have me disbarred. This can have a chilling effect on ones 1st Amendment rights.U.S.C. Amendment I; Standing Committee v. Yagman, 55 F.3rd 1430, at 1437-1438(9th Cir. 1995 (Cal.))

None of the four charges levied should be upheld. DLRPC 3.5(c) states that a lawyer shall not engage in undignified or discourteous conduct that is degrading to a tribunal. This provision is facially invalid because it is overbroad and is applied in Delaware without any limiting construction so as not to

interfere with constitutionally protected speech, including the truth when it causes a thinskinned Delaware Chief Justice pain. Standing Committee v. Yagman, 55 F.3rd 1430(9th Cir. 1995 (Cal.)), at 1436-1437 All statements made in the letter must be viewed as true. The disciplinary counsel provided no evidence indicating anything stated was not true despite having the burden of proof to do so. Standing Committee v. Yagman, 55 F.3rd 1430, at 1441(9th Cir. 1995 (Cal.))

DLRPC 8.2 forbids an attorney from making statements with reckless disregard of their truth or falsity concerning the integrity of a judge. The standard to evaluate this is an objective one wherein the court must determine "what the reasonable attorney, considered in light of all his professional functions, would do in the same or similar circumstances." The inquiry focuses on whether the attorney had a reasonable factual basis for making

the statements, considering their nature and the context in which they were made. Standing Committee v. Yagman, 55 F.3rd 1430, at 1437(9th Cir. 1995 (Cal.))
The disciplinary did not reach its burden of proof, in fact they provided no factual evidence, to establish the statements made were false. Therefore the statements must be presumed to be true and the truth is an absolute defense. Standing Committee v. Yagman, 55 F.3rd 1430, at 1441(9th Cir. 1995 (Cal.)) On its face it is clear the letter only went to one person, the Chief Justice, and no allegations to the contrary have been made. Appendix D The letter is now available to the public since the Board is required to make it public by issuing a public reprimand. I handled the letter in the appropriate way that a formal complaint should be handled. U.S.C. Amendment I(petition government)

DLRPC 8.4(d) states it is

professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice. In this case, the speech was prejudicial to the administration of injustice. Lawyers participating in pending cases may be punished if their out-of-court statements pose merely a "substantial likelihood" of materially prejudicing the fairness of proceedings. Lawyer's statements unrelated to a matter pending before the court may be sanctioned only if they pose a clear and present danger to the administration of justice.U.S.C. Amendment I; Standing Committee v. Yagman, 55 F.3rd 1430, at 1443(9th Cir. 1995 (Cal.)) In this case, there was not a case pending. The letter of October 5, 1992 from Charles Slanina, Disciplinary Counsel, on its face makes this clear. Appendix C,E There was merely an effort to begin an audit using a criteria that had never been used before in an effort

to harass me for the reasons previously stated.

The letter to the Chief Justice can not be the basis for sanctions based on harm to the administration of justice. The letter, that was only sent to the Chief Justice, was the appropriate manner to relay the information to the Chief Justice. Standing Committee v. Yagman, 55 F.3rd 1430, at 1437 -1438(9th Cir. 1995 (Cal.)) In retrospect, petitioner should have publicly blasted the Chief Justice at a press conference regarding the matters in the letter since the Chief Justice obviously did not want the contents of the letter brought to his attention even though he is the appropriate person to receive the information. There was no danger to the administration of justice by sending this letter. There is no need to consider the immediacy and clearness of the danger given the complete absence of any danger. Standing Committee v. Yagman, 55

F.3rd 1430, at 1442-1445(9th Cir. 1995 (Cal.))

DLRPC 8.1(b) states that a lawyer in connection with a disciplinary matter shall not knowingly fail to respond to a lawful demand for information from a disciplinary authority. Disciplinary Counsel requested my side of the story.Appendix F It was provided.Appendix G My side of the story as outlined in my response was "I would like to know to whom I should forward my letter dated October 7, 1992. It has been explained to me that Justice Veasey had administrative control over the Judicial system." It was further explained that "I will let the decision makers make their decision on this case." Disciplinary Counsel may not like my response, but he does not have the power to make me write the answer he wants written. I was given an opportunity to give my side of the story and I did so in a clear and concise way. In

addition, disciplinary counsel was informed that he should get the case before appropriate decision makers. In addition, I made it clear to the disciplinary counsel that I was being attacked "because I make the truth about the legal system, including the law, accessible to people who they do not want to have access." The truth is a defense to 1st Amendment cases. Between asserting the truth of matters asserted and indicating that the Chief Justice is the administrative head of the Court system responsible to address concerns such as those provided, I feel that I was very responsive. If the Disciplinary Counsel wanted me to inform him that he had the burden of proving the falsity of speech or to educate him on other 1st Amendment matters, I do not believe it is my job to do so. He failed to establish falsity and in fact could not prove the falsity of the statements in the letter to the Chief Justice because everything

was true.

At all stages of the proceedings I have asserted the 1st Amendment and the fact that the Chief Justice is the administrative head of the court system.Appendix A,G,I,J,K,L

REASONS FOR GRANTING THE PETITION

Compelling reasons exist for the exercise of the Court's discretionary jurisdiction

The National importance of this case is the concern best expressed by Justice Black as follows: "An enforced silence, however limited, solely in the name of preserving the dignity of the bench, would probably engender resentment, suspicion, and contempt much more that it would enhance respect." To date the Board on Professional Responsibility nor the Delaware Supreme court has been willing to carefully evaluate this case using 1st Amendment analysis. The reason why they have not is because they know the statistical odds of the U.S. Supreme Court being unwilling to review a case is so enormous that they can disregard the U.S. Constitution and get away with it. The Chief Justice has been successful in interfering with my freedom of association with the

NAACP. Matters of this nature require your review.

This decision is in conflict with the decision of another appellate court, Standing Committee v. Yagman, 55 F.3d 1430(9th Cir. 1995(Cal.)). The Delaware Supreme Court refused to address the merits of any issues in their decision despite the fact that this recent case was placed before them by disciplinary counsel.

The importance of the case to me and others similarly situated is that in America there are still people in power in the legal community who oppress others based upon their race and/or association with the NAACP. There are still people in the legal community across this country who believe it is fashionable to harass attorneys who address racism that currently exists in the legal community. In Delaware there is only one level of appellate review. In Delaware, there are only approximately 700,000 people and

approximately 2,800 lawyers of which only approximately 60 are minority. I am the only attorney in the entire state who is actively involved with the NAACP. Delaware's legal community has harassed me for this reason. I have never been employed as attorney and due to a lack of financial resources, I have never had any support staff to assist me with the modest case load that I do have. Through the leadership I have provided, through the NAACP, many attorneys of color have had the opportunity to be in positions that minorities have never held before. The white controlled legal community has exhibited open hatred towards me because of this. Do to my leadership, minorities for the first time have positions as U.S. Attorney, and as judges on two Courts where minority judges have never served before. Minority lawyers are now having unprecedented opportunities in the private sector and in government. I am proud of

the leadership I have provided in Delaware on this front, but the legal community in Delaware, including the Chief Justice chooses to personally and directly attack me as was done in this case. Your review of this case is requested to put in check Delawareans efforts directed towards a result of silencing me and forcing me to disassociate myself from the NAACP without regard to the law under the U.S. Constitution that disallows that result. The issue of importance is whether the Constitutional protections supposedly afforded to all citizens can be disregarded if those in power seek an objective of harassing those who do not have power and use the machinery of the government to implement the oppression. Every person involved in processing this case is directly appointed by the Chief Justice and or Supreme Court or by one of the appointees. This case has not been reviewed by anyone

who is not forced by the structure of the disciplinary process to assist the Chief Justice in his personal direct attack upon me. All lawyers similarly situated need to know whether the U.S. Constitution protects us from local and state actions inconsistent with the U.S. Constitution. On a personal level, your decision with regard to whether or not to grant a Writ of Certiorari will determine for me whether as a black man in America, I should have any belief in justice from the judicial branch of government. My belief in Delaware's judicial branch of government as a place where black people can obtain justice is almost completely gone. The absence of any analysis at all on the part of the Delaware Supreme Court is what is most amazing.

The decision of the lower court in my case was erroneous because I was denied an evidentiary hearing to confront my accusers in violation of procedural due process. In

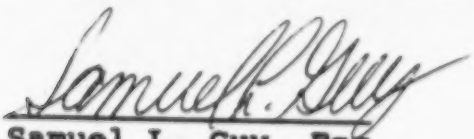
addition, the disciplinary counsel never alleged in the original complaint that the contents of my letter was untrue and disciplinary counsel never presented any evidence that in any way suggests that anything in the letter was untrue. In the absence of such, I can not be found to have violated any of the 1st Amendment related accusations against me. The Court can not presume my letter is untrue. As a matter of law, the contents of my letter must be viewed as true and are in fact true. The Board's Order after the June 13, 1994 on the Motion for a Hearing does not include a finding of "wilfulness." The absence of such a finding, as a matter of law, does not allow the Board to preclude an opportunity to be heard as is required under procedural due process under state and federal constitutional analysis. A default judgment is not the appropriate remedy.U.S.C. Amendment XVI Section 1.; Cebenka v.Upjohn

Co., Del.Supr., 559 A.2d 1219, 1226; Sundor Electric, Inc. v. E.J.T. Construction Co., Inc., Del.Supr., 337 A.2d 651.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Samuel L. Guy, Esq.

Date: December 12, 1995

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THE STATE OF DELAWARE
IN THE MATTER OF A)
MEMBER OF THE BAR OF THE) No.
SUPREME COURT OF) 138,
DELAWARE:) 1995
SAMUEL L. GUY, ESQUIRE)
Submitted: September 12, 1995
Decided: September 13, 1995
Before WALSH, HOLLAND and BERGER, Justices.

ORDER

This 13th day of September, 1995, it appears to the Court as follows:

1) The Board on Professional Responsibility filed a final report with this Court on April 13, 1995.

2) The Respondent, Samuel L. Guy, filed objections to the Board's report. the Respondent declined to file a brief or appendix to support his objections. Disciplinary Counsel has replied to the Respondent's objections.

3) The Court has concluded that the recommendations in the

Board's final report are supported by the evidence and the product of a logical deductive process.

NOW, THEREFORE, IT IS ORDERED, that the final report of the Board on Professional Responsibility, is hereby APPROVED. This matter is hereby CLOSED.

BY THE COURT:

s/ Randy Holland

Justice

BOARD OF PROFESSIONAL RESPONSIBILITY OF THE SUPREME COURT OF THE STATE OF DELAWARE

IN THE MATTER OF A MEMBER OF THE BAR OF THE SUPREME COURT OF DELAWARE: SAMUEL L. GUY, ESQUIRE RESPONDENT.	) BOARD) CASE NO.) 55, 1992

REPORT OF THE BOARD ON SANCTIONS

This is a report of the Board on Professional Responsibility("Board") following a hearing held March 1, 1995 on matters of aggravation and of mitigation for the Board's consideration in imposing or recommending an appropriate sanction.

The Board ruled on April 27, 1994 that the facts alleged in the Petition for Discipline were deemed to have been admitted, and directed the parties to file briefs as to the conclusions of law to be drawn from the facts as to the four charges alleged in the Petition.

The ODC filed a timely memorandum in support of disciplinary violations in accordance with the brief schedule. The Respondent filed a Motion for a hearing on the merits of the charges on May 11, 1994. The Board held a hearing on the Respondent's motion on June 13, 1994, and denied Respondents's motion. The Board then extended the time for the Respondent to file a memorandum to July 1, 1994 on the conclusions of law to be drawn from the facts. The Respondent did not file a memorandum.

The Board entered a ruling August 25, 1995 that the facts stated in the Petition that was filed August 2, 1993 were established by clear and convincing evidence that the Respondent violated the four charges set out in the Petition that occurred in October and November 1992 as follows:

1.DLRPC Rule 3.5(c) for engaging in

undignified or discourteous conduct that is degrading to a tribunal.
2.DLRPC Rule 8.2 for making statements with reckless disregard to their truth of falsity concerning the integrity of a judge.
3.DLRPC Rule 8.4(d) for engaging in conduct that is prejudicial to the administration of justice.
4.DLRPC Rule 8.1(b) for failing to respond to a lawful demand for information from a disciplinary authority.

The August 25, 1994, ruling by the Board sets out its findings and conclusions which will not be restated.

The O.D.C. has made a recommendation that at a minimum the Respondent should receive a public reprimand with a condition that the Respondent make an apology to the Chief Justice.

The aggravating circumstances alleged are other disciplinary violations of the Respondent, his lack of remorse, and the

Respondent's lack of cooperation with disciplinary counsel.

The ODC has pointed out the most concern that the office has had with the Respondent is his lack of cooperation with the ODC.

The ODC has put into the record that the Respondent has been sanctioned four times by either the Board or Delaware Supreme Court by two private admonitions and two public reprimands. All of those disciplinary orders were entered subsequent to the time that the charges in this case occurred.

Respondent was given a public reprimand in consolidated Board Cases 14 and 18, 1992. The Respondent was found to have violated Rule 1.3 for lack of diligence in Board Case 14; and Rule 1.1 for lack of competence; Rule 3.4(c) for the failure to abide by obligations to a tribunal; and Rule 8.4(d) for conduct prejudicial to the administration of justice in Board Case 18. The Board filed its

report January 27, 1994. the Supreme Court ordered a reprimand, may 5, 1994. The conduct in Case 14 occurred on January 7, 1992; the conduct in Case 18 occurred on May 13, 1992

The Respondent was given a private admonition in Board case 41 for violation of Rule 3.4(c) for violating an obligation to a tribunal, Rule 8.4(d) for conduct prejudicial to the administration of justice, and Rule 1.1(b) for failure to cooperate with disciplinary counsel by a Board report dated August 13, 1993. Those charges stemmed from conduct that occurred on August 5, 1992 and around October 15, 1992.

Respondent was given a private admonition in Board Case 33, 1993 for violation of Rule 1.15(a), dealing with maintenance of books and records violations by a report, dated February 22, 1995. the conduct occurred between September and December 1993.

The Respondent was given a public reprimand in Board Case 46, 1993 for violating Rule 8.1(b) for failure to cooperate with disciplinary counsel. The conduct occurred on May 25, 1993, June 24, 1993, and July through August, 1993. The Board filed a report October 14, 1994, and the Supreme Court entered an Order approving the report November 14, 1994

The chronology of the other charges is such that only Cases 14 and 18 dealt with conduct occurring prior to the charge in this case and the charges in Case 41 occurred at or about the same time the time of the charges in this case. Put in this context the Board considers the other violations did not occur at a time to forewarn the Respondent of the danger involved by his conduct in this case.

The Respondent's violation of Rule 3.5(c) for conduct disruptive to a tribunal and violation of Rule 8.2 for making statements with

reckless disregard to their truth or falsity concerning the integrity of a judge is the Respondent's first occasion to violate those rules.

A mitigating factor is the lack of experience of the Respondent before the bar. He was admitted to the Bar June 5, 1989. The ODC has informed the Board that the compliance check with the Client Security Trust Fund has been satisfactorily resolved. The ODC's letter to the Respondent of October 5, 1992, dealing with the scheduling of the trustees of the Client Security Trust Fund, was the initial event of the circumstances pertaining to the charge set out in this matter.

Respondent's position was that the letter was directed to the Chief Justice as the administrative head of the court on an administrative complaint against the O.D.C and the Client Security Trust Fund. He stated that to be sanction for the letter is a violation of his right

to free speech; and that it is part of a racial conspiracy.

The Board raised the question whether Rule 3.5(c) would pertain to the conduct in respect to the Respondent's letter to the Chief Justice. The Board has ruled that such conduct did come within the rule for the reason that the letter was written during an ongoing proceeding by the ODC and the Lawyers Fund for Client Protection.

A question was raised as to whether Rule 8.4(d) raises a constitutional objection as to vagueness. The Board pointed out in its prior ruling that although there does not appear to be any Delaware cases with facts similar to those of this case, other jurisdictions have found such conduct to be prejudicial to the administration of justice under Rule 8.4(d).

Questions were raised to whether the Respondent's letter to the Chief Justice came within the purview of rule 8.2. The Board has

made a ruling that it does. It pointed out in its opinion that there are no Delaware cases that construe DLRPC 8.2, but other jurisdictions have found such conduct does violate the rule. ODC has acknowledged that there are constitutional implications to that Rule

The Board gave the Respondent the opportunity to address the conclusions of law derived from the facts set out in the charges. The Respondent did not file a memorandum. The Board concluded that the Respondent abandoned any objections as the sufficiency or validity of the charge.

The Board, however, takes into account that there are legitimate constitutional implications to DLRPC Rule 8.2, 8.4(d), and to the application of Rule 3.5(c); and that the Respondent sent the letter to the Chief Justice under the belief that he had a legitimate right to make a complaint.

The Board concludes that any claim that the Respondent was the subject of a racial conspiracy is without foundation.

Under these circumstances the Board considers that a public reprimand is an appropriate sanction.

The decision of the Board is pursuant to BPR Rule 8(a)(5) that the Respondent be given a public reprimand with a condition that the Respondent make an apology to the Honorable E. Norman Veasey, Chief Justice of the Supreme Court of the State of Delaware and that the Respondent pay the costs of the proceedings.

DATED: April 10, 1995

s/ Jackson Dunlap

Jackson R. Dunlap, Jr., Esq., Chair

cc: David-Curtis Glebe, Disciplinary Counsel
Samuel L. Guy, Esquire
Harvey Rubenstein, Esquire
Mr. Halsey Knapp
Ben T. Castle, Esquire

Steven J. Rothchild, Esquire

Office of Disciplinary Counsel
October 5, 1992
Samuel L. Guy, Esquire
2227 N. Market Street
P.O. Box 25464
Wilmington, DE 19802
Re: ODC File No. 92-10-1
Samuel L. Guy, Esquire
(Client's Security Trust Fund)
Dear Mr. Guy:

We have been advised by the Trustees of the Client's Security Trust Fund that they have been unable to arrange a compliance check of your books and records. Your cooperation with such a compliance check is mandatory.

Please advise me in writing by 5:00 p.m. on Wednesday, October 7, 1992 that you have scheduled such a review to occur on or before October 16, 1992. Failure to make and report such arrangements will necessitate immediate and potentially severe disciplinary action.

Very truly yours,

APPENDIX C

s/Charles Slanina
Charles Slanina
Disciplinary Counsel
CS:mrt
cc: The Honorable Joseph T. Walsh
Harold Schmittinger, Esquire
Chairman, Clients'
Security Trust Fund
Morton R. Kimmel, Esquire
Secretary, Clients'
Security Trust Fund

Samuel L. Guy
Attorney At Law
October 7, 1992
The Honorable E. Norman Veasey
Chief Justice
Delaware Supreme Court
Wilmington, DE 19801

RE: Conspiracy

Dear Justice Veasey:

I write you in response to the threats received from your subordinate, Charles Slanina who has manipulated the handling of my cases and had grouped several cases together that are unrelated such that there is no need for me attempt to refute the charges because it is clear he is cheating and acting dishonestly in regard to matters that I assert innocence.

I have carefully observed how every aspect of the Delaware Bar and Delaware Judiciary operates that I have been able to observe. With respect to most of it, I believe that blacks are not allowed unless they are willing to play the role of

being harmful to other blacks when this is needed.

It is apparent to me that the attached letter as well as several other related events are part of an conspiracy to prevent me from exercising several rights that I have. In the attached letter there is reference to a requirement that the Client Security Trust Fund be allowed to do a compliance check. Given the timing of the request and several other events, I am concerned that the following, or a subset thereof, charles Slanina, the Client Security Trust Fund and Judge Toliver and Victor Battaglia, his counsel in connection with his contempt citation against me, who was also my Counsel immediately after being found in contempt, are using the arms of the Delaware Supreme court in a way that it was not intended.

In connection with this, I find it very interesting how the Delaware Supreme Court through its arms, has

managed to allow there not to be a proper investigation of what may have been criminal acts on the part of a member of the Delaware Judiciary and instead has decided to conspire to harass me, one of the victims, in the form of not providing a mechanism for my direct appeal to be handled in a manner that would lead to justice and a record of the facts.

I do not believe I have any obligation to show anyone anything outside the scope of the "sham" reason set forth in the attached letter. Please accept this letter as a form complaint that the Client Security Trust Fund and Office of Disciplinary Counsel are misusing their authority for the personal benefit of members of the Delaware Bar and Judiciary as referenced above for the purpose of harassing me and depriving me my rights including those of a federal nature.

The Honorable E. Norman Veasey

You can not lead a historically racist institution or be a racist as many members in the Delaware Judiciary and Delaware Bar are and be counted on to dispense justice. By being new, you have an opportunity to clean up the mess. So far you have made it clear that you are going to allow racism to run rampant in the Delaware Courts and in the Delaware Bar, primarily through your failure to make it clear where you stand. I am very disappointed in you and there is no doubt in my mind that those who believe African-Americans have less rights clearly understand the message you have sent this far and will continue to engage in the traditional patterns of racism that have been established. You can't be blamed for what you inherited, but you are to blame if you let it continue.

If you are not the right person

to present this information to then I have to give up on Delaware and look to the federal government to dispense justice.

Sincerely,

s/ Samuel L. Guy

Samuel L. Guy, Esq.

SLG:bms

Supreme Court Of Delaware
October 8, 1992
Samuel L. Guy, Esquire
Suite 2, 2227 N. Market Street
Wilmington, DE 19802
Dear Mr. Guy:

This will acknowledge receipt of your letter of October 7, 1992 to the Chief Justice. As the letter represents an inappropriate communication with the Court over a pending matter between you and Disciplinary Counsel, I, as court Administrator, respond on behalf of the Court simply to acknowledge your letter.

In the event that disciplinary proceedings may come before the Supreme court in the future under the usual procedures, see In re Kennedy, Del. Supr., 442 A.2d 79(1981), it is inappropriate for the Chief Justice to comment and it is premature for him to take any action at this time.

Further, because your letter may be found to constitute a

violation of Rule 8.2 of the Delaware Lawyer's Rules of Professional Conduct, the Court is obliged to refer your letter to Disciplinary Counsel as the appropriate disciplinary body. See Canon 3 of the Delaware Judges' Code of Judicial Conduct.

Finally, the Court believes it is inappropriate for you to have any further direct communications with members of the Court about these matters unless and until there is a formal proceeding in the proper posture before this court.

Yours sincerely,

s/ Stephen D. Taylor

Stephen D. Taylor

SDT/jer

cc: The Honorable E. Norman Veasey
The Honorable Henry R. Horsey
The Honorable Andrew G. T. Moore, II
The Honorable Joseph T. Walsh
The Honorable Randy J. Holland
Charles Slanina, Esquire(w/enclosure)

Office Of Disciplinary Counsel
October 21, 1992
Samuel L. Guy, Esquire
Suite 2
2227 North Market Street
Wilmington, Delaware 19802

Re: ODC File No. 92-10-9
(Samuel L. Guy, Esquire)

Dear Mr. Guy:

The captioned disciplinary matter has been opened by this Office pursuant to our review of the enclosed documents, and under the authority given to this Office pursuant to Board on Professional Responsibility Rule 9(a). My initial review of this matter, as well as my review of the Delaware Lawyers' Rules of Professional Conduct(the "Rules"), raises concerns with respect to Rules 3.5, 8.2, and 8.4(d). Other Rules may be applicable.

Your written response to this matter is hereby solicited. i would appreciate your comments as to shy your conduct with respect to the

enclosed materials has or has not violated any of the rules. Please send your written response directly to me by Monday, November 16, 1992. Thank you for your cooperation with this Office.

Very Truly yours,

s/ David C. Johnson-Glebe

David C. Johnson-Glebe

Deputy Disciplinary Counsel

SAMUEL L. GUY
ATTORNEY AT LAW
October 22, 1992
David C. Johnson-Glebe
Deputy Disciplinary Counsel
ODC
831 Tatnall Street
P.O. Box 1808
Wilmington, DE 19899
RE: ODC File No. 92-10-9
(Samuel L. Guy, Esquire)
Dear Mr. Johnson-Glebe:

In response to your letter dated October 21, 1992, I can only ask why I, as the complainant, have not received a carbon copy of a letter indicating that you have begun to look into the concerns I have placed before Justice Veasey and which are now before you as a result of receiving a copy of my letter dated October 7, 1992. I forgot, in Delaware, by being black, my concerns do not matter.

How is it that in Mr. Slanina's letter dated October 5, 1992, he is able to carbon copy Justice Walsh

without Stephen Taylor judicially declaring that "the letter represents an inappropriate communication with the Court over a pending matter?" If Stephen Taylor did file a complaint against Mr. Slanina then I withdraw the question.

I would also like to know to whom I should forward my letter dated October 7, 1992. It has been explained to me that Justice Veasey has administrative control over the Judicial system.

I has been explained to me that several of your colleagues in the Delaware Bar and Judiciary do not want me practicing law in Delaware because I make the truth about the legal system, including the law, accessible to people who they do not want to have access. The price I will have to pay is constant attack such as that you and your colleague have been executing on behalf of others. Since physical slavery is over, this is the more modern method

of trying to keep blacks and other minorities down.

In case you did not know what was going on, the above is relayed to make sure you are aware. This eliminates the possibility of you, at some future date, saying you did not know.

One thing I have learned, racist organizations do not care how they reach the result, as long as it is the result they desire. With that thought in mind I will let the decision makers make their decision on this case.

Sincerely,
s/ Samuel L. Guy
Samuel L. Guy, Esq.
SLG:bms

BOARD ON PROFESSIONAL RESPONSIBILITY OF THE SUPREME COURT OF THE STATE OF DELAWARE

In the Matter of	)	
a Member of the Bar of	)	
the Supreme Court of	)	
the State of Delaware:	)	Board
	)	Case No.
SAMUEL L. GUY	)	55, 1992
	)	
Respondent.	)	

PETITION FOR DISCIPLINE

The Office of Disciplinary Counsel ... hereby petitions the Board ... to discipline the above-named Respondent, and submits in support thereof the following:

1. Samuel L. Guy, Esquire (the "Respondent") is a member of the Bar of the Supreme Court of the State of Delaware, having been admitted to practice in 1989.

2. At all times relevant to this Petition, the Respondent was engaged in the private practice of law in the State of Delaware.

3. On October 5, 1992, the OCD

delivered a letter to the Respondent dealing with the scheduling of a "compliance check" of the Respondent's books and records, as mandated under the Regulations of the Trustees of the then-named Clients' Security Trust Fund (now called the "Lawyers' Fund for Client Protection"); the ODC's letter warned the Respondent that his failure to arrange the required "compliance check" would result in disciplinary action against him.

4. In response to the ODC's letter, the Respondent sent a letter, dated October 7, 1992, to The Honorable E. Norman, Chief Justice of the Supreme Court of the State of Delaware (the "October 7 Letter").

5. In the October 7 Letter, the Respondent alleged that the Delaware Supreme Court "through its arms, has managed to allow there not to be a proper investigation of what may have been criminal acts on the part of a member of the Delaware

Judiciary and instead has decided to conspire to harass me...".

6. In the October 7 Letter, the Respondent directed the following statements to the Chief Justice in particular: "You can not lead a historically racist institution ... [SEE APPENDIX D for full text of excerpt] ... I have to give up on Delaware and look to the federal government to dispense justice."

7. In response to the October 7 Letter, Stephen D. Taylor, Court Administrator for the Delaware Supreme Court, sent a letter to the Respondent, dated October 8, 1992, acknowledging receipt of the October 7 Letter, and informing the Respondent that the October 7 Letter was being referred to the ODC for evaluation as a possible violation of the Delaware Lawyers' rules of Professional Conduct(the "Rules"); a copy of Mr. Taylor's letter was sent to the ODC.

8. In response to the possible

disciplinary issues arising from the Respondent's sending of the October 7 Letter, the ODC opened a disciplinary matter file, designated as "ODC File No. 92-10-9", and sent a letter to the Respondent, dated October 21, 1992 (the "First Request"), informing the Respondent that the matter was being evaluated by the ODC pursuant to Board Rule 9(a), and requesting that the Respondent provide a written response, by November 16, 1992, as to whether his conduct with respect to the sending of the October 7 Letter was a violation of Rules 3.5, 8.2, or 8.4(d).

9. On October 24, 1992, the ODC received a letter form the Respondent, dated October 22, 1992 (the "October 22 Letter"), stating that it was sent "in response" to the First Request.

10. The October 22 Letter contained, inter alia, various questions about the procedures in filing complaints against

disciplinary counsel, about who is properly copied on certain correspondence, and about the forwarding of such correspondence.

11. The October 22 Letter did not address or respond to any of the disciplinary issues raised in the First Request, namely, whether the Respondent's sending of the October 7 Letter was a violation of Rules 3.5, 8.2, or 8.4(d).

12. In response to the October 22 Letter, the ODC sent a letter to the Respondent, dated october 27, 1992 (the "Second Request"0, explaining the purpose for the ODC's previously-sent "routine request" for a written response regarding the Respondent's sending of the October 7 Letter, explaining the obligation of all Delaware attorneys to respond to such requests, explaining certain matters regarding the sending of carbon copy letters, explaining the procedure for filing a misconduct complaint against a member of the judiciary, explaining the procedure

for filing a disciplinary complaint against disciplinary counsel, and requesting once again a written response to the specific disciplinary issues raised in the First Request.

13. The Respondent did not respond to the Second Request.

14. Since the ODC had received no response from the Respondent by the end of November, 1992, nor any request for an extension of time to respond, the ODC sent another letter to the Respondent, dated December 1, 1992 (the "Third Request"), once again asking for the Respondent's written response to the specific disciplinary issues raised in the First Request, and setting a new deadline for such response of December 29, 1992.

15. The Third Request contained the following explicit warning to the Respondent of the consequences of his continued failure to respond to the ODC: "Accordingly, I will ask one more

time for your written response to my letter to you of October 21, 1992. if I do not receive your written response to my routine request by Tuesday, December 29, 1992, I will be forced to complete my evaluation of this disciplinary matter without the benefit of your input, and will also be forced to conclude that you are knowingly violating Rule 8.1(b)."

16. The Respondent did not respond to the Third Request.

* * * * *

COUNT ONE: ENGAGING IN UNDIGNIFIED OR DISCOURTEOUS CONDUCT WHICH IS DEGRADING TO A TRIBUNAL

17. The acts of the Respondent alleged in Paragraphs 4, 5, and 6 above indicate and constitute a violation of Rule 3.5(c), which states that a lawyer shall not engage in undignified or discourteous conduct which is degrading to a tribunal.

COUNT TWO: MAKING FALSE OR RECKLESS STATEMENTS CONCERNING THE

QUALIFICATIONS OR INTEGRITY OF A JUDGE

18. The acts of the Respondent alleged in Paragraphs 4, 5, and 6 above indicate and constitute a violation of Rule 8.2, which states that a lawyer shall not make a statement the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge.

COUNT THREE: ENGAGING IN CONDUCT THAT IS PREJUDICIAL TO THE ADMINISTRATION OF JUSTICE

19. The acts of the Respondent alleged in Paragraphs 3, 4, 5, and 6 above indicate and constitute a violation of Rule 8.4(d), which states that it is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice.

COUNT FOUR: KNOWINGLY FAILING TO RESPOND TO A LAWFUL DEMAND FOR INFORMATION FROM A DISCIPLINARY AUTHORITY

20. The acts of the Respondent alleged in Paragraphs 8 through 16 above indicate and constitute a violation of Rule 8.1(b), which states a lawyer shall not knowingly fail to respond to a lawful demand for information from a disciplinary authority.

...

Dated this 2nd day of August, 1993.

OFFICE OF DISCIPLINARY COUNSEL

S/ David C. Johnson-Glebe

David C. Johnson-Glebe
Deputy Disciplinary Counsel
831 Tatnall Street
P.O. Box 1808
Wilmington, Delaware 19899
(302) 571-8703

BOARD ON PROFESSIONAL RESPONSIBILITY OF THE SUPREME COURT OF THE STATE OF DELAWARE

In the Matter of a Member of the Bar of the Supreme Court of the State of Delaware:	)	Board
	)	Case No.
SAMUEL L. GUY	)	55, 1992
Respondent.	)	

RESPONSE TO PETITION FOR DISCIPLINE

1. Admitted.
2. Admitted.
3. Respondent presently has insufficient information to admit or deny this paragraph.
4. Denied.
5. Admitted.
6. Denied.
7. Admitted.
8. Admitted.
9. Admitted.
10. Admitted.
11. Denied.
12. Admitted.
13. Denied.

APPENDIX I

14. Denied.
15. Admitted.
16. Denied.
17. Denied.
18. Denied.
19. Denied.
20. Denied.

Respondent further avers that this case is part of a conspiracy to prevent me from exercising my rights of free speech, due process, and equal protection(State and Federal), rights that are not recognized by the State of Delaware for black citizens such as I.

s/ Samuel L. Guy

Samuel L. Guy, Esquire
SAMUEL L. GUY
ATTORNEY AT LAW
P.O. Box 25464
Wilmington, DE 19899
November 7, 1993

Samuel L. Guy
Attorney-At-Law
April 12, 1995
Supreme Court Of The State Of Delaware
Dover, Delaware

RE: OBJECTIONS-BOARD CASE NO. 55, 1992

Dear Court:

Delaware's legal community is attempting to do several unjust things to me. The decision in this case attempts to make me pay the costs of an unjust harassment directed towards me. ODC knows full well that I do not have any money. The only objective is to suspend me or disbar me for not being able to pay the costs. ODC seeks a public reprimand because it wants to make sure that I do not obtain gainful employment and to discourage people from having me represent them. The Board wants me to apologize to the Supreme Court for being victimized and for complaining about it to the appropriate person, the Chief

Justice, who under Delaware's Constitution is responsible for the administration of the Courts. The harassment intended is blatant because the requested apology in the order is to be directed to the entire Supreme Court. In reality, the Chief Justice should apologize to me because to this date the complaints made in my letter have not been investigated. Instead the Supreme Court ordered ODC and the Board to convict me and they have done so. They have no choice but to follow the orders of the persons who they answer to and who can have them removed form their positions of power. Given the origins of this case, how could I expect to have anything other than the present outcome. The message is clear. Delaware Law is that black people have no right to complain when being harassed by white people in power. White people in power refuse to investigate race based wrongdoing of its colleagues. When it is

investigated everybody acts like they can not see anything. The fact that the Board decision orders an apology to the Supreme Court shows something crooked is going on. The letter I sent went to the Chief Justice and no one else. If the letter is so inappropriate, why would a Board issues a decision that requires that the letter be made available to the public. I stand by the letter as the truth and also assert my right to free speech, particularly when the letter only went to one person who is supposed to have the matters investigated.

Once again the disciplinary process is denying me an opportunity to have access to a transcript. I can not afford one and the Board has previously refused me access to the Board case file.

I was not allowed to have a evidentiary hearing in this case. This was done to protect my accusers from having to testify and to prevent me from having an

opportunity to testify.

I was not allowed to subpoena the witnesses I needed at the sanctions hearing for the reasons outlined above.

THE ODC lied when it said I did not cooperate. The ODC unethically withheld from the PRC the fact that we agreed for me to come to the ODC office so he could question me under oath since ODC was attempting to dictate to me how to respond to it's inquiry. ODC covered up the transcript until I brought it to the attention of the Board. Of course, I was never allowed access to the transcript prior to use in defending myself.

I reassert all of the issues raised from the beginning of this case to the present.

Sincerely,

s/ Samuel L. Guy

Samuel L. Guy, Esq.

SLG:bms

Samuel L. Guy
Attorney At Law
May 8, 1995
Supreme Court of Delaware
State Building
Wilmington, DE 19801

RE: In the Matter of Guy, No. 138, 1995

Dear Court:

The State of Delaware through its various components has made it crystal clear that there is a special law in Delaware that does not allow me, as a black man, to exercise my right to free speech. it is based in a racism that generally refuses to listed to anything that a black person in Delaware has to say. Therefore, it is senseless for me to waste time and resources attempting to defend myself for telling the truth and exercising the freedom of speech under the Delaware and U.S. Constitution that white people are allowed to exercise.

For the reasons stated above,

and other reasons as well, I will not be filing an opening brief and appendix. I reassert any and all arguments that are presently in the record including those arguments made in the deposition that ODC failed to disclose to the Preliminary Review Committee because they were exculpatory in nature.

The bottom line is that once government takes away citizens free speech rights, citizens can not defend themselves nor can citizens bring corruption to the attention of government. In such an environment corruption and oppression of the citizenry will flourish.

In time, the corrupt and oppressive harassment directed at me will boomerang around on the people involved.

Sincerely,

s/ Samuel L. Guy

Samuel L. Guy, Esq.

SLG:bms

cc: David C. Glebe, Esq., ODC

SUPREME COURT OF DELAWARE

May 16, 1995

Samuel L. Guy, Esquire
P.O. Box 25464
Wilmington, DE 19899

David C. Glebe, Esquire
Disciplinary Counsel
P.O. Box 472
Wilmington, DE 19899

Re: In the Matter of Guy, No. 138, 1995

Counselors:

Please be advised that Mr. Guy's letter of May 8, 1995 shall be deemed to be the opening brief and appendix in this matter, although it does not comply with the Court Rules. Therefore, Disciplinary Counsel is to file an answering memorandum, not to exceed 10 pages in length, on or before June 15, 1995.

Very truly yours,
s/ Cathy L. Howard
/clh

APPENDIX L

SUPREME COURT U.S.
FILED
JAN 11 1996
CLERK

NO. 95-927

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1995

IN THE MATTER OF A MEMBER OF THE BAR OF THE SUPREME COURT OF THE STATE OF DELAWARE: SAMUEL L. GUY, ESQUIRE,

PETITIONER.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF DELAWARE

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF DELAWARE

OFFICE OF DISCIPLINARY COUNSEL
DAVID CURTIS GLEBE, CHIEF COUNSEL
200 WEST NINTH STREET, #300-A
P.O. BOX 472
WILMINGTON, DELAWARE 19899
(302) 571-8703

DATED: JANUARY 11, 1996

QUESTIONS PRESENTED

1. Where federal constitutional claims were not adequately presented by the Petitioner while his disciplinary case was under consideration by the Delaware Board on Professional Responsibility, and where the Petitioner also failed on appeal to adequately present the claims to the Delaware Supreme Court, does this Court have jurisdiction to review such claims?

2. Where the Petitioner was given notice of the specific factual allegations being made against him in a lawyer disciplinary case, as well as the specific disciplinary charges, and where the Petitioner was notified in writing of the date of all hearings before the Board on Professional Responsibility, and where the Petitioner was not precluded in any manner from appealing the Board's findings of his professional misconduct to the Delaware Supreme Court, was the Petitioner thereby deprived of due process under the federal constitution?

3. Where the Petitioner engaged in a disrespectful personal attack on the Chief Justice of the Delaware Supreme Court in the course of on-going proceedings before various agencies of that court, did the Board's ruling, as upheld by the Delaware Supreme Court, that the Petitioner be reprimanded violate the First Amendment of the federal constitution?

LIST OF PARTIES

1. **Samuel L. Guy, Esquire** -- a member of the Bar of the Supreme Court of the State of Delaware, the respondent attorney in the disciplinary matter below, and the Petitioner herein.

2. **Office of Disciplinary Counsel** -- the agency of the Delaware Supreme Court charged with evaluating, investigating, and prosecuting all matters involving the professional conduct of Delaware lawyers, and the respondent herein; the agency's chief disciplinary counsel, and the person who investigated and prosecuted this case below, is David Curtis Glebe, Esquire, a member of the Bar of the Supreme Court of the State of Delaware, as well as this Court.

3. **Board on Professional Responsibility** -- the agency of the Delaware Supreme Court charged with hearing all attorney disciplinary matters, and with submitting its reports and recommendations on such matters to the Delaware Supreme Court.

4. **Delaware Supreme Court** -- the highest court in the State of Delaware, having the inherent and exclusive jurisdiction and authority over all matters in the State of Delaware pertaining to the practice of law.

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Matter of Guy, unpublished "Pre-Hearing Order", Board on Professional Responsibility of the Supreme Court of the State of Delaware, Board Case No. 55, 1992 (April 27, 1994).

Matter of Guy, unpublished "Order", Board on Professional Responsibility of the Supreme Court of the State of Delaware, Board Case No. 55, 1992 (August 25, 1994).

Matter of Guy, unpublished "Report of the Board on Sanctions", Board on Professional Responsibility of the Supreme Court of the State of Delaware, Board Case No. 55, 1992 (April 10, 1995).

Matter of Guy, unpublished Order, Supreme Court of the State of Delaware, No. 138, 1995 (September 13, 1995).

BASIS FOR JURISDICTION

This Court lacks jurisdiction under 28 U.S.C. Section 1257 and its caselaw interpreting that statute, since none of the federal claims brought now by the Petitioner were adequately "pressed or passed upon" by the state-level tribunals below. (See infra.)

COUNTER-STATEMENT OF THE CASE

Since the Petitioner's "Statement of the Case" contains so many statements that are not only misleading to this Court, but are outright falsehoods, the Office of Disciplinary Counsel of the Delaware Supreme Court (the "ODC") hereby presents its own counter-statement of the underlying facts of this case. References hereinbelow to the Petitioner's Appendix will be made as "PA, at ___", and references to the ODC's attached Appendix will be made as "OA, at ___".

1. **The Parties.** The Petitioner is a Delaware attorney, having been a member of the Delaware Bar since 1989. PA, at H and I. The Board on Professional Responsibility (the "Board"), as the adjudicative agency for attorney disciplinary matters for the Delaware Supreme Court, recently ruled that the Petitioner should be publicly reprimanded for having violated several of the Delaware Lawyers' Rules of Professional Conduct (the "DLRPC"). PA, at B. The Delaware Supreme Court, which has the inherent and exclusive authority in Delaware pertaining to matters relating to the practice of law, upheld the Board's findings. PA, at A. The ODC, as the Delaware Supreme Court's prosecutorial agency for attorney disciplinary matters, initiated, investigated, and prosecuted the disciplinary case (the "Board Case") which the Petitioner is now asking this Court to review. PA, at F.

2. **The Petitioner's Letter to the Chief Justice of the Delaware Supreme Court.** The Board Case began in October of 1992, when the Petitioner was not complying with a routine procedure whereby Delaware attorneys must submit their law practice books and records for examination by the Clients'

Security Trust Fund, another agency of the Delaware Supreme Court. In light of the Petitioner's recalcitrance, the ODC sent the Petitioner a letter promising disciplinary action if he did not immediately cooperate with respect to the examination. PA, at C.

The Petitioner then sent a letter, dated October 7, 1992, to The Honorable E. Norman Veasey, Chief Justice of the Delaware Supreme Court (the "October Letter"), containing a disrespectful and degrading personal attack upon the Chief Justice. PA, at D. The October Letter was referred to the ODC for disciplinary evaluation, and the Petitioner was informed by letter from the Administrator of the Delaware Supreme Court that his attempt to contact the Chief Justice directly was inappropriate. PA, at E.

3. **The Disciplinary Investigation.** Thereafter, the ODC sent a routine inquiry letter to the Petitioner, asking for his specific position as to whether the October Letter violated certain specifically-enumerated DLRPC. PA, at F. The Petitioner then sent the ODC a letter which asked various procedural questions but which was, on its face, unresponsive to the ODC's inquiry letter. PA, at G. The ODC responded to the Petitioner's letter, and informed him of the proper procedures for filing grievances against members of the Delaware judiciary and members of the disciplinary system, but informed him that since his letter was obviously not responsive to the ODC's inquiry letter, a response to that letter was still expected. PA, at H and I. When the Petitioner did not so respond, the ODC sent yet another letter to the Petitioner, asking for the third time for his position as to the disciplinary implications of the October Letter, and warning him that his failure to supply requested information would be taken as his

knowing violation of a professional obligation. PA, at H and I. The Petitioner never sent any further response to the ODC. PA, at H.

4. **The Filing of Disciplinary Charges.** In August of 1993, a Petition For Discipline was filed against the Petitioner by the ODC. PA, at H. The Petition For Discipline charged the Petitioner with four violations of the DLRPC:

first, that the Petitioner's sending of the October Letter violated DLRPC 3.5(c) (engaging in undignified or discourteous conduct which is degrading to a tribunal),

second, that the Petitioner's sending of the October Letter violated DLRPC 8.2 (making reckless statements about the integrity of a judge),

third, that the Petitioner's sending of the October Letter violated DLRPC 8.4(d) (engaging in conduct that is prejudicial to the administration of justice), and

fourth, that the Petitioner's failure to cooperate with the ODC violated DLRPC 8.1(b) (failure to supply requested information to disciplinary authorities).

When the Petitioner filed no timely response to the Petition For Discipline, the ODC moved under the Board's procedural rules to have the allegations in that Petition deemed admitted. OA, at A. The Petitioner opposed the ODC's motion, and requested that the panel of the Board then assigned to the case accept an untimely response from him. Id. In January of 1994, the Board dismissed the ODC's motion, and granted the Petitioner's motion to file an untimely response to the Petition For Discipline. The Board then indicated that a pre-hearing conference would thereafter be scheduled on notice to the parties. Id.

5. **Scheduling the Pre-Hearing Conference.** The pre-hearing conference was eventually scheduled for April 18, 1994. OA, at B. In the weeks prior to that date, the only input made by the Petitioner as to the matter of scheduling was in a letter from him to the chair of the Board, dated March 8, 1994, in which he stated that, "I am pretty much flexible with respect to scheduling a pre-hearing conference." OA, at C. Written notice of the date of the pre-hearing conference was sent to the Petitioner and the ODC by letter dated April 7, 1994, and the Petitioner was also notified directly by telephone call on April 7, 1994. OA, at B.

On the date of the pre-hearing conference, the undersigned disciplinary counsel appeared for the ODC, as did members of the panel of the Board. OA, at B. When the Petitioner did not appear, the Board ruled that the factual allegations of the Petition For Discipline had therefore been deemed admitted, and that several documents, including the October Letter and the correspondence between the ODC and the Petitioner from the fall of 1992, were put into the evidentiary record. Id. The Board issued a Pre-Hearing Order, dated April 27, 1994, setting forth its rulings, and calling for the parties to submit briefs on the disciplinary implications of the deemed admissions of the Petition For Discipline. Id.

6. **The First Hearing, and the Board's Order Finding Professional Misconduct.** When the Petitioner requested that the Board grant him a full evidentiary hearing, the Board conducted a hearing on June 13, 1994 to consider the Petitioner's request, during which the Petitioner was asked by the Board why he had failed to appear at the scheduled pre-hearing conference. OA, at C. The Petitioner's reason was that he had closed his

office during that time in order to run for political office, that he had therefore not attended to the mail sent to his post office box during that time, and that he had therefore not attended to the oral messages left on his telephone answering machine during that time. Id.

After denying the Petitioner's request for a hearing, the Board asked the parties to submit briefs on the substantive merits of the disciplinary charges. The ODC filed a timely memorandum of law, arguing that the deemed factual admissions supported all of the charged disciplinary violations. The Petitioner filed nothing at all. PA, at B. On August 25, 1994, the Board issued a comprehensive and detailed order, finding that the Petitioner had violated all four of the disciplinary charges in the Petition For Discipline. Id.

7. **The Second Hearing, and the Board's Report on Disciplinary Sanctions.** The Board then conducted, upon written notice to the parties, another hearing on March 1, 1995, to consider the issue of the appropriate disciplinary sanction to be imposed for the violations found. PA, at B. The Board then issued a report on sanctions, dated April 10, 1995, recommending the imposition of a public reprimand upon the Petitioner, conditioned upon his apology to the Chief Justice and payment of costs. Id.

8. **Review by the Delaware Supreme Court.** The Petitioner then filed a letter with the Delaware Supreme Court, dated April 12, 1995, and another letter, dated May 8, 1995, objecting to the Board's disposition of the Board Case. PA, at J and K. When the Petitioner refused to file a brief with that court, his May 8, 1995 letter was deemed by that court to be his "opening brief and

appendix". PA, at L. Consequently, there was no formal briefing before the Delaware Supreme Court. On September 13, 1995, the Delaware Supreme Court issued a brief order approving the Board's findings. PA, at A.

ARGUMENT: REASONS FOR DENYING THE WRIT

The Petitioner's present request for a writ of certiorari to the Delaware Supreme Court, to the extent that it is even comprehensible at all, is groundless. In essence, the Petitioner is attempting to use this Court to overturn state court decisions which were adverse to him, and his couching of objections in the language of the federal constitution, without supporting analysis or argument, does not justify his petition.

First, the Petitioner failed to submit any brief or memorandum of law to the Board which heard his disciplinary case, even when he was specifically requested to do so. Moreover, after the Board's findings were sent to the Delaware Supreme Court for review, the Petitioner then refused to file a brief with that Court. At most, the Petitioner has merely made several vague and general statements to the Board and the Delaware Supreme Court as to his "constitutional rights" or his "freedom of speech" and so on. However, since he has had several opportunities to present and argue any claims relating to his rights under the federal constitution in the state-level proceedings, and has failed or refused to do so, this Court lacks jurisdiction to issue the writ.

Second, even if the Court were to conclude that it does have jurisdiction over the Petitioner's case, he has raised no issue of constitutional concern warranting the issuance of the writ. The procedural history of the Petitioner's disciplinary case is one in which the Board took many extraordinary procedural steps to try to accomodate the Petitioner, from allowing him to file a late response to the Petition For Discipline, to sending him both written and oral notifications of hearing dates. His present claim that the Board (and presumably the Delaware Supreme Court) engaged in a "racist conspiracy" to deny him due process under the federal constitution is therefore unwarranted.

Third, the Petitioner's claim that his First Amendment right of "freedom of speech" was violated is similarly groundless, since the October Letter, being a degrading and personally insulting communication directed by an attorney to a judge in the midst of an ongoing proceeding involving the investigation of the attorney's books and records, falls outside of the realm of protected speech under the First Amendment, as the decisions of this Court and other courts have established.

Finally, the Petitioner's claims that his First Amendment rights of "freedom of association" or "right to petition" have been violated by a "racist conspiracy" concocted by the state-level disciplinary officers are not even comprehensible, much less valid. Moreover, his plethora of other miscellaneous complaints are similarly baseless. Because this Court obviously need not waste its time attempting to interpret the meaning of a petitioner's inarticulable, absurd, and utterly groundless claims, even when couched in language used in the federal constitution, the petition for the writ should be denied.

1. The Petitioner's Failure To Adequately Present His Claims Below Demonstrates His Failure To Satisfy One Of The Court's Jurisdictional Requirements.

This Court has stated that it has no jurisdiction to hear a federal claim unless "the record as a whole shows either expressly or by clear implication that the federal claim was adequately presented in the state system." Webb v. Webb, 451 U.S. 493, 496-97 (1981) (emphasis added).

In the present case, the Petitioner's failure to submit a memorandum of law or brief to the Board, properly dealing with any "constitutional implications" of the charges in the Petition For Discipline, and his admitted refusal to file any brief with the Delaware Supreme Court dealing with his federal claims, demonstrates that he has failed to satisfy the requirement that such federal claims be properly "raised or addressed" in the state courts. Yee v. City of Escondido, 503 U.S. 519, 533 (1992); Illinois v. Gates, 462 U.S. 213 (1983).

Although the Petitioner did make a few vague references before the Board and the Delaware Supreme Court to some constitutional principles, this Court has held that such vague references are insufficient to allow a federal claim to be preserved in the state courts for review by the U.S. Supreme Court. Bankers Life & Casualty Co. v. Crenshaw, 486 U.S. 71 (1988). In other words, mere general references by the Petitioner to "freedom of speech" or "due process" do not satisfy the requirement that federal claims be "adequately presented" on the state-court level.

Although this Court has sometimes viewed the "not pressed or passed upon below" rule as prudential rather than jurisdictional, prudential grounds are still sufficient in the present case for the denial of the petition.

Gates, 462 U.S. at 218-223. This is because of the underlying purposes of the rule. In the first place, this Court has held that state courts should be given the opportunity in the first instance to consider the constitutionality of the acts of state officials, out of the "due regard for the appropriate relationship of this Court to state courts". Id., 462 U.S. at 221, quoting McGoldrick v. Compagnie Gererale, 309 U.S. 430, 435-436 (1940). In the second place, when federal questions are not raised below, it is very likely that the record on review will be inadequate, "since it certainly was not compiled with those questions in mind." Gates, id., quoting Cardinale v. Louisiana, 394 U.S. 437, 439 (1969).

Both of these considerations apply here. Although the Board did make a few general references to the "constitutional implications" of the disciplinary violations found against the Petitioner, the Delaware Supreme Court never ruled on these questions, at least in part because the Petitioner himself refused to file a brief with that court in order to properly present such questions. The Petitioner's failure to file a brief with either the Board or the Delaware Supreme Court also demonstrates the inadequacy of the record in this case were it to be reviewed by this Court. In effect, there is very little for this Court to review, except for the Petitioner's vague and general allegations. Accordingly, even if the "not pressed or passed upon" rule is seen as a prudential one rather than a jurisdictional one, the Petition should be rejected.

2. The Disciplinary Procedures Followed By The Board And The Delaware Supreme Court In This Case Were Consistent With Federal Standards Of Due Process.

It has been held that, because the interests at stake in lawyer disciplinary proceedings are not considered as fundamental or essential as those at stake in criminal proceedings, a lawyer's federal due process rights "do not extend so far as to guarantee the full panoply of rights afforded to an accused in a criminal case." Razatos v. Colorado Supreme Court, 746 F.2d 1429, 1435 (10th Cir. 1984), cert. denied, 471 U.S. 1016 (1985). Alternatively, this Court has held that some due process standards, such as the necessity of prior notice of the charges to be considered by a disciplinary board, do apply in lawyer disciplinary proceedings. In re Ruffalo, 390 U.S. 544 (1968).

In this case, not only was there no lack of due process accorded the Petitioner, but in fact, the opposite is true, viz., both the Board and the Delaware Supreme Court went to great lengths at several steps in the disposition of the Petitioner's disciplinary case to accomodate him. As one of the Board's early rulings shows, after the Petitioner was served with a factually-detailed Petition For Discipline, which also specifically-enumerated all of the disciplinary charges against him, he failed to file a timely answer. OA, at A. At that point, the Board had the full authority to deem the allegations of the Petition For Discipline as admitted. However, the Board used its discretion to accomodate the Petitioner, allowing him to file a late response to the Petition For Discipline.

When the Board attempted to schedule a pre-hearing conference, both the Board and the ODC made special efforts to solicit the Petitioner's personal input as to that

scheduling, and his only input was by letter indicating that he was "flexible". OA, at C. The Petitioner was then sent written notice of the date of the pre-hearing conference, and he was even personally telephoned at the same time with oral notice of the scheduling. OA, at B.

When the Board ruled that the Petitioner's failure to appear at the pre-hearing conference resulted in deeming the factual allegations of the Petition For Discipline against him, the Board then granted the Petitioner a full hearing so that he could have the opportunity to demonstrate why his failure to appear should not have had this result. PA, at B. Contrary to the Petitioner's averments, the Board entered no "default judgment", but merely deemed the factual allegations of the Petition For Discipline to have been established. Whether the disciplinary violations followed from those allegations was still open to argument at that point. However, when the Board specifically asked the Petitioner to submit a memorandum of law, precisely so that he could give his arguments against the disciplinary violations, he failed to submit anything. Id.

After the Board found that the Petitioner's conduct had violated several of the DLRPC, the Board even granted the Petitioner a second full hearing, so that he could present any mitigating factors to the Board in consideration of sanctions.

Finally, after the Board issued its report on sanctions and the Petitioner sent a letter to the Delaware Supreme Court objecting to the Board's findings, the Petitioner then refused to file a brief before that Court. PA, at K. The Delaware Supreme Court then took an additional step to accomodate the Petitioner, and allowed his informal letters to that court to be deemed as his "opening brief and appendix" instead of ordering him to conform

to the procedural requirements for briefing of matters before the court. PA, at L.

Thus, the Petitioner was given more than adequate procedural consideration at each and every step of the disciplinary process. He was duly notified of the factual allegations being made against him and was duly notified of the specific disciplinary charges being filed. He was notified in writing of each and every hearing. He was asked at several points to submit memoranda of law or briefs in support of his position.

As this Court held in Ruffalo, federal due process requirements mandate that an attorney in a disciplinary process be fully notified and informed as to the allegations and charges being made. The actions of both the Board and the Delaware Supreme Court were fully consistent with this standard, and demonstrated not only toleration of the Petitioner's continued obstreperous conduct but considerable accomodation as well.

The Petitioner has not cited a single federal case in support of his vague "due process" claim, and has cited only a few irrelevant Delaware cases dealing with the penalties (such as an entry of judgment by default) which a tribunal is permitted to issue when a party fails to comply with an order. As stated above, however, when the Board took the step of deeming the factual allegations of the Petition For Discipline as established, in light of his failure to appear for any good reason at the scheduled pre-hearing conference (and after conducting a separate hearing on that issue alone), the Board did not enter a "default judgment" against the Petitioner. OA, at B. Indeed, if the Petitioner had simply filed a proper memorandum of law with the Board, he might have been able to show that the facts admitted into evidence by the Board did not show that he violated any of the DLRPC.

The Petitioner's argument that he was not allowed to subpoena the Chief Justice of Delaware to the scheduled hearing on disciplinary sanctions also shows his misunderstanding of the proceedings. The purpose of the hearing on sanctions was to focus on any aggravating or mitigating factors, after there had already been a finding of misconduct. The testimony of the Chief Justice was simply irrelevant to the issues facing the Board at that point, which focused upon the Petitioner's misconduct, not upon the conduct of persons whom he characterized as his "accusers". In short, the Petitioner's attempt to subpoena the Chief Justice and others was merely another exercise in harassment on his part, which the Board was correct to stop.

In light of the foregoing reasons, and absent any cogent articulation or authority on the Petitioner's part with respect to his "due process" claims, the petition for the writ should be denied.

3. The Public Reprimand Of The Petitioner For Violation Of Certain Disciplinary Rules, As A Result Of His Sending Of The October Letter, Did Not Violate The Respondent's Freedom Of Speech Rights Under The First Amendment.

While this Court has held that legitimate criticism of a judge for honest error cannot, consistent with constitutional guarantees of freedom of speech, be cause for attorney discipline, see, e.g., In re Sawyer, 360 U.S. 622 (1959), this Court has long-recognized that attorneys can be required to temper their speech to conform to the standards of professional responsibility. For example, as early as 1872 this Court recognized that a lawyer's obligation to maintain respect for the courts "includes

abstaining out of court from all insulting language and offensive conduct toward the judges personally for their judicial acts." Bradley v. Fisher, 80 U.S. 335, 355 (1872).

Even where the lawyer's insulting statements are directed to a judicial officer in a private letter, the lawyer may be disciplined consistent with constitutional guarantees of freedom of speech. In re Evans, 801 F.2d 703 (4th Cir. 1986), cert. denied, 480 U.S. 906 (1987). In the Evans case, a lawyer was disbarred from the federal district court of Baltimore after he sent a letter to a federal magistrate complaining about the judge's "Jewish bias", and where he later refused to apologize.

Generally, it has been held that constitutionally-permissible disciplinary restrictions on statements about judges involve a determination of "what the reasonable attorney, considered in light of all his professional functions, would do in the same or similar circumstances." United States District Court v. Sandlin, 12 F.3d 861, 867 (9th Cir. 1993). It follows that courts may, consistent with constitutional considerations of freedom of speech, require attorneys to speak with greater care and civility than is the norm in, say, political campaigns. Matter of Palmisano, 70 F.3d 483, 487 (7th Cir. 1995). In other words, attorneys who make critical comments about members of the judiciary must do so in a professionally responsible way.

The Board below ruled that the Petitioner's admitted conduct in this case, namely, making reckless statements about the integrity of a judge, fell below the standard of what a reasonable and professionally responsible attorney would have done, and therefore found that the conduct violated certain disciplinary rules and warranted that the Petitioner should be reprimanded. The

Board's actions, as well as those of the Delaware Supreme Court in upholding the Board's findings, were therefore consistent with constitutional principles regarding protected and unprotected speech.

Although the Petitioner presented no argument or authority (other than general references to his constitutional rights) to the Board to refute its findings, and although the Petitioner presented no argument or authority whatsoever (other than general references to his constitutional rights) to the Delaware Supreme Court Court to show that the Board erred, the Petitioner's present petition to this Court finally cites a federal case, namely, Standing Committee on Discipline v. Yagman, 55 F.3d 1430 (9th Cir. 1995). In that case, the court found that an attorney's public statements critical of a judge were protected speech, in part, because they were not proven false at the attorney's disciplinary proceeding. The Petitioner presumably claims that since his allegations of a "racist conspiracy" against the Chief Justice of Delaware were never proven by the ODC to be false, they cannot be considered as having been made in a "reckless" manner, and even further, must be assumed as true. This is ridiculous.

A judicial officer against whom reckless and delusional allegations are made should not have to be put into the absurd position of having to formally answer to such allegations. This approach would turn the entire disciplinary process on its head, by turning the victim of the misconduct into the accused, and by making the accused the victim. Moreover, it sets up a virtually impossible evidentiary burden, since the victim of the reckless allegations is then placed into the position of having to "prove a negative".

For example, suppose that the Petitioner had accused all of the judges in

Delaware of participation in a worldwide illegal drug ring, and of a massive "conspiracy" to cover up that activity. Under the Petitioner's theory, the burden would be upon the ODC to prove that the judges did not engage in such conspiracy. But how could that be proven? If the ODC demonstrated that there was no evidence whatsoever of the judges' participation in any sort of criminal conspiracy, the Petitioner could always counter this by saying that the very lack of available evidence "proved" that the conspiracy did exist, since it demonstrated how efficiently it was being "covered up".

In the present case, there could have been no possible evidence which the ODC could have produced to "prove" that the Chief Justice of Delaware, along with all of the other members of the Delaware legal community, were not engaging in a "racist conspiracy" against the Petitioner. No matter what evidence was produced, and no matter how groundless this claim could have been shown to be, the Petitioner could always maintain that such lack of evidence was, in itself, proof of the "cover up" and the conspiracy against him. Contrary to the Petitioner's position, however, judges need not be put into the absurd position of having to disprove a lawyer's delusional allegations, which are "true" in the lawyer's mind and nowhere else.

Consequently, it is incorrect that the ODC had to "disprove" the Petitioner's allegations of a "racist conspiracy", and that Board had to specifically find that the Petitioner's allegations about the Chief Justice were false. As the authorities cited above have held, the Board only needed to find that the statements had been made in a professionally irresponsible and unreasonable manner, with "reckless disregard" as to their truth or falsity. Given the admissions and the documents in the record which the Board

considered, there was more than adequate evidence for that finding. The Board's actions, as well as those of the Delaware Supreme Court in upholding the Board's findings, were therefore consistent with constitutional requirements.

As pointed out by the court in Palmisano, supra, to the extent that the Yagman case holds that attorneys are permitted to openly excoriate members of the judiciary without proper limitations, the holding in that case is inconsistent with the holdings of this Court. Palmisano, 70 F.3d at 487, citing in support Sawyer, supra, and In re Snyder, 472 U.S. 634 (1985). Accordingly, neither the Board nor the Delaware Supreme Court violated the Petitioner's freedom of speech under the federal constitution.

4. The Petitioner's Other Claims And Allegations Are Groundless.

The Petitioner has strewn his petition to this Court, in a virtually "stream of consciousness" manner, with a multitude of miscellaneous allegations and claims, some of which are outright falsehoods, and many of which are misleading. None of these statements, however, justify this Court's issuance of the writ. The following brief comments are therefore offered in response thereto.

As to the claim that the October Letter was an exercise in the Petitioner's right to petition the government for grievances, this is misleading. After the October Letter was sent, the ODC sent a letter to the Petitioner detailing the proper procedures for filing a grievance against a member of the Delaware judiciary or a member of the disciplinary system. PA, at H and I, at paragraph 12 of each. If the Petitioner had had a legitimate grievance, he would have

followed such procedures rather than sending insulting letters directly to the persons he was complaining about. Rather than being a legitimate exercise in petitioning the government, the Petitioner's sending of the October Letter was merely an act of unprofessional harassment on his part. Moreover, the Petitioner has cited no authority, either on the state-court level below or before this Court, which would support his characterization of the October Letter as a legitimate petition to the government, as protected under the federal constitution.

As to the Petitioner's claims that African-American persons are "not allowed to sit on the Board", this is ridiculous and downright false. In addition, the fact that the Petitioner could make such a blatantly untrue statement in a petition to this Court shows how little regard he must have for the truth. The same goes for his assertions that since there are no African-Americans on the Board (which is false), he could get no fair hearing, or that the "common practice" in Delaware is to "get" African-American persons. The character of these illogical statements themselves demonstrate the delusional quality underlying the claims made in the present petition to this Court.

Regarding the claim that the Board scheduled the pre-hearing conference with "full knowledge" that he was busy in a political campaign, this is misleading. The Petitioner was asked several times for his input on scheduling, and he told the Board that he was "flexible". After the conference was scheduled, and after he was given both written and oral notice, all he had to do was pick up the telephone and inform the Board that he was busy running for office at that time, and desired the matter to be rescheduled. All it took was a two-minute

telephone call. Further, there is nothing in the record indicating that the Board knew anything about the Petitioner's political activities, or that the election campaign affected the Board's scheduling in any manner.

As to the Petitioner's claim that no "proceeding" was on-going or disrupted at the time of the October Letter, the documents submitted in the Petitioner's own Appendix show this to be false. PA at C shows that the Petitioner was involved in an on-going effort by one of the agencies of the Delaware Supreme Court, the Clients' Security Trust Fund, in scheduling a required examination of his law office books and records. PA at E shows that the October Letter was rejected by the Delaware Supreme Court in part because it related to a "pending matter" between the Petitioner and the ODC. Therefore, the Board's finding that the sending of the October Letter was disruptive and prejudicial to an on-going proceeding was correct.

Regarding the Petitioner's bizarre claim that the actions of the Chief Justice (or somebody in the Delaware judiciary or disciplinary system) were intended to prevent him from associating with the NAACP, thus depriving him of his "freedom of association", it is difficult to respond because this claim is incomprehensible. Absent some intelligible articulation of this allegation, the ODC merely notes here that it appears to be yet another of the Petitioner's series of delusional claims with no basis in reality.

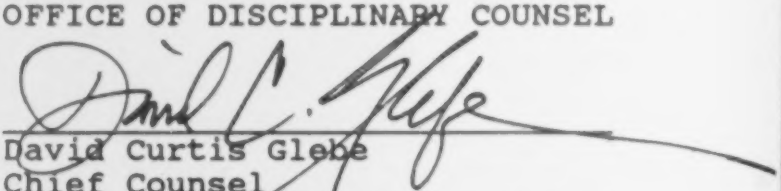
As to the other general comments regarding how the Petitioner is a great leader in the community, a tireless crusader for equal rights for all, and so on, these self-serving claims may be true, but they do not give this Court any ground whatsoever to grant the petition here.

CONCLUSION

In light of the foregoing reasons, the petition for a writ of certiorari to the Delaware Supreme Court should be denied.

Respectfully submitted,

OFFICE OF DISCIPLINARY COUNSEL



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DATED: January 11, 1996

APPENDIX

APPENDIX A

Confidential Ruling of the Board on Professional Responsibility of the Supreme Court of the State of Delaware, in Board Case No. 55, 1992 (Matter of Guy), dated January 24, 1994:

RULING OF THE BOARD

Two motions are before the Board.

The Office of Disciplinary Counsel filed a motion for leave of parties to file memorandum of law on the issue of sanctions with the Panel of the Board on Professional Responsibility that is assigned to this disciplinary matter. The reason for the motion is that the Respondent had not filed a timely response to the petition and that the allegations in the petition should be deemed to be admitted.

Samuel L. Guy has filed a motion for an extension of time to file a response to the Petition for Discipline, with a response attached to it.

The motion by Samuel L. Guy for leave to file a response is granted and the response included in the motion is deemed to be filed. The motion of Disciplinary Counsel to file memorandum of law on the issue of sanctions is denied.

A prehearing conference shall be held before Board member Harvey B. Rubenstein at a time directed by him.

DATED: January 24, 1994

(signed) CHAIR: Jackson R. Dunlap, Jr. Esq.
P.O. Box 742
Georgetown, De. 19947
Telephone: (302) 856-7361

APPENDIX B

Confidential Ruling of the Board on Professional Responsibility of the Supreme Court of the State of Delaware, in Board Case No. 55, 1992 (Matter of Guy), dated April 27, 1994:

PRE-HEARING ORDER

A pre-hearing conference was held on April 18, 1994 at 1:30 p.m. at the Supreme Court Conference Room, 11th Floor, Carvel State Office Building, Wilmington, Delaware, before the Chairman and Board Member, Harvey Bernard Rubenstein. Notice of the hearing was given to Disciplinary Counsel and Respondent, Samuel L. Guy, Esquire, by letter dated April 7, 1994. Notice was also given to Respondent by leaving a telephone message to him on April 7, 1994.

Respondent failed to appear at the pre-hearing conference. David Curtis Glebe, Disciplinary Counsel, was present. The Board proceeded with the conference at 1:50 p.m. in Respondent's absence.

In accordance with Superior Court Civil Rule 16(f), and as permitted under Board Rule 15(b), because of his failure to appear at the pre-hearing conference, Respondent shall be deemed to have admitted paragraphs 3, 4, 6, 11, 13, 14, and 16 of the Petition.

The seven letters offered by Disciplinary Counsel that are referred to in the Petition are made a part of the record.

The October 5, 1992 letter of Disciplinary Counsel to the Respondent supports the truth of the matters set out in paragraph 3 of the Petition.

The October 7, 1992 letter of Respondent to the Honorable E. Norman Veasey supports the truth of the matters set out in paragraphs 4 and 6 of the Petition.

The October 22, 1992 letter of Respondent to Disciplinary Counsel supports the truth of the matters set out in paragraph 11 of the Petition.

The Disciplinary Counsel's letter to Respondent, dated December 1, 1992, supports the truth of the matters set out in paragraphs 13, and 14 of the Petition

The Board, upon considering the Petition, Answer, the letters, and the matters deemed admitted by Respondent, finds that there are no material issues of fact as to the matters set out in paragraphs 1 through 16 of the Petition, and, therefore, there shall be no hearing on factual issues.

The parties shall file briefs on the conclusions of law to be drawn from the facts as to the four charges set out in the Petition.

The brief schedule shall be as follows:

Disciplinary Counsel shall file an opening brief on or before May 18, 1994. Respondent shall file an answering brief no later than June 7, 1994. Disciplinary Counsel shall file a reply brief no later than fifteen days after service of the answering brief.

The April 22, 1994 application of Disciplinary Counsel for reargument on the Board's ruling dated January 24, 1994 is denied.

April 27, 1994

(signed) Jackson R. Dunlap, Jr., Esquire

APPENDIX C

Excerpts from the Transcript of a Hearing before the Board on Professional Responsibility of the Supreme Court of the State of Delaware, in Board Case No. 55, 1992 (Matter of Guy), held June 13, 1994:

...

MR. RUBENSTEIN: Mr. Guy, when you closed your office, did you make any provision to receive any kind of message in the event that one of the pending cases might be sent down for a hearing during that period?

MR. GUY: One of what pending cases?

MR. RUBENSTEIN: Any pending case that you may have had.

MR. GUY: Here?

MR. RUBENSTEIN: In Delaware? I mean, suppose somebody tried to reach you in connection with a case that you had, how would they have reached you during that period of time?

MR GUY: There is nobody that is going to have to reach me during the period of time for no pending case. I don't have no big law offices, I don't have no big bunch of pending cases. Before I closed up, I got everything checked, everything all checked out for schedule for dates, everything. No, I didn't have anything coming up during that period of time and then went on and did what I had to do.

MR. RUBENSTEIN: Did you take into account the fact that perhaps something might be set down for that period of time?

MR. GUY: Not that quick. Nobody sets anything down that quick. There is no court case I have where anything gets set down that quick.

MR. RUBENSTEIN: When you say that quick, I believe the notice went out on April 7th for prehearing conference on April the 18th.

MR GUY: Nothing, I don't have anything. Your law office may, or maybe you're not a lawyer, I don't know, maybe one of you aren't a lawyer, somebody told me that. I don't have anything that operates that way, nothing.

THE CHAIRMAN: Do you have a phone answering machine on your telephone at the office?

MR. GUY: I have an answering machine at the house.

THE CHAIRMAN: At the telephone number that's given for your office, do you have an answering service?

MR. GUY: No.

THE CHAIRMAN: On April the 7th did you have an answering service?

MR. GUY: I would probably have forwarded messages to go on a home machine since the office wasn't open.

THE CHAIRMAN: Well, I'm asking you, on the 7th was that in operation?

MR. GUY: It most likely would have been because the office wasn't open.

MR. RUBENSTEIN: Would you have gotten the message on the 7th at your home?

MR. GUY: No, I would have gotten the message once I went back to the office. I was gone.
...

MR. RUBENSTEIN: When you closed your office, Mr. Guy, during those weeks, if someone called your office at the telephone number of your office, would that ring through to your home?

MR. GUY: They would just get to a message. If the machine is on, they get to leave a message.

MR. RUBENSTEIN: And would that message be conveyed to your home rather than to your office?

MR. GUY: Right. Mainly because I don't have no money to have two answering machines.
...

MR. CHAIRMAN: Excuse me, Mr. Guy, really, the point I'm making is that it appears that you did write me around March the 8th stating among other things that you stated, "I am pretty much flexible with respect to scheduling a prehearing conference."

MR. GUY: That's the truth. There is no question about that.
...

MR. CHAIRMAN: The Board after considering the motion of Mr. Guy for a hearing on the factual issues in this case having been considered and from what has been stated for the record is that Mr. Guy during the relevant times around April 7th indicated that he was absent from the office and during his absence there was an answering service and there was the indication from him that telephone calls were also forwarded to his home. He also indicated that the post office box 25464 in Wilmington,

Delaware was used by him for his office mail as well as his personal mail. Taking further that there is a presumption that a letter was mailed and received by the recipient. The respondent further has indicated that he did not receive this message or letter until after the April meeting on the 18th.

The Board considers that the reasons for the respondent not answering the communication is not a reasonable one. Furthermore, as in indicated, a telephone message was left on his answering service on April 17th, 1994 announcing among other things that the pretrial hearing was set for June 13th at 2:00 p.m. at the Supreme Court conference room, 11th floor, State Office Building, Wilmington Delaware. Therefore, the application for a hearing is denied.

However, as stated in the prehearing order, the facts have been deemed to have been admitted and the parties shall have the opportunity to file briefs on the conclusions of law to be drawn from the facts as to the four charges set out in the petition.

...